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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,332	12/13/2001	Jorg Hofmann	Mo-6843/LeA 33,555	7899
157	7590	11/07/2003	EXAMINER	
BAYER POLYMERS LLC			COONEY, JOHN M	
100 BAYER ROAD			ART UNIT	PAPER NUMBER
PITTSBURGH, PA 15205			1711	

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/018,332	HOFMANN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	John m Cooney	1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 August 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11 and 13-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

Applicant's arguments filed 08-04-03 have been fully considered but they are not persuasive.

Examiner notes that applicants' amendment to claim 11 which inserts the limitation "having a terminal propylene oxide block" is sufficiently clear from the standpoint of 35 USC 112 as being defining of the polyether polyol rather than the double metal cyanide catalyst. Accordingly, no rejection has been set forth herein.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 11 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Thompson et al.(6,008,263).

Thompson et al.(6,008,263) discloses preparations of flexible polyurethane foams prepared from isocyanates and polyether polyols prepared in the presence of double metal cyanide catalyst and having molecular weights encompassing of those claimed by applicants (see the entire document). Thompson et al.'s disclosure is encompassing of the distributions and amounts of the various blocks in the polyols used as described by applicants' claims, and no distinction is seen to exist between the reference's disclosed flexible foams and the foams defined by applicants' claimed foaming techniques as they are both directed towards flexible foams and it is the composition which defines the product being claimed in the instant case.

Claims 11and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lear et al.(5,958,994).

Lear et al. discloses preparations of flexible polyurethane foams prepared from isocyanates and polyether polyols prepared in the presence of double metal cyanide catalyst and having molecular weights encompassing of those claimed by applicants (see the entire document). Lear et al.'s disclosure is encompassing of the distributions and amounts of the various blocks in the polyols used as described by applicants' claims, and no distinction is seen to exist between the reference's disclosed flexible foams and the foams defined by applicants' claimed foaming techniques as they are both directed towards flexible foams and it is the composition which defines the product being claimed in the instant case.

Claims 11 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Beisner et al.(6,066,683).

Beisner et al. discloses preparations of flexible polyurethane foams prepared from isocyanates and polyether polyols prepared in the presence of double metal cyanide catalyst and having molecular weights encompassing of those claimed by applicants (see the entire document). Beisner et al.'s disclosure is encompassing of the distributions and amounts of the various blocks in the polyols used as described by applicants' claims, and no distinction is seen to exist between the reference's disclosed flexible foams and the foams defined by applicants' claimed foaming techniques as they are both directed towards flexible foams and it is the composition which defines the product being claimed in the instant case.

Claims 11 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hager (5,648,559).

Hager discloses preparations of flexible polyurethane foams prepared from isocyanates and polyether polyols prepared in the presence of double metal cyanide catalyst and having molecular weights encompassing of those claimed by applicants (see the entire document). Hager's disclosure is encompassing of the distributions and amounts of the various blocks in the polyols used as described by applicants' claims, and no distinction is seen to exist between the reference's disclosed flexible foams and the foams defined by applicants' claimed foaming techniques as they are both directed

towards flexible foams and it is the composition which defines the product being claimed in the instant case.

Claims 11 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kinkelaar et al.(5,668,191)

Kinkelaar et al. discloses preparations of flexible polyurethane foams prepared from isocyanates and polyether polyols prepared in the presence of double metal cyanide catalyst and having molecular weights encompassing of those claimed by applicants (see the entire document). Kinkelaar et al.'s disclosure is encompassing of the distributions and amounts of the various blocks in the polyols used as described by applicants' claims, and no distinction is seen to exist between the reference's disclosed flexible foams and the foams defined by applicants' claimed foaming techniques as they are both directed towards flexible foams and it is the composition which defines the product being claimed in the instant case.

Applicants' arguments have been considered. However, rejections are maintained for the reasons set forth again above.

Applicants' argument regarding Thompson et al. has been considered. However, rejection is maintained because the claims do not exclude polyols having both ethylene oxide and propylene oxide terminal blocks but rather only requires that a terminal polypropylene oxide block be included. Polyether polyols having both ethylene oxide

and propylene oxide terminal blocks are encompassing of polyether polyols having a terminal propylene oxide block.

Applicants' argument regarding Lear et al. has been considered. However, rejection is maintained because the claims do not exclude polyols having a high molecular weight tail containing oxypropylene and oxyethylene moieties with a substantially homopolymer cap, but rather only requires that a terminal polypropylene oxide block be included. Polyether polyols having a high molecular weight tail containing oxypropylene and oxyethylene moieties with a substantially homopolymer cap are encompassing of polyether polyols having a terminal propylene oxide block as claimed.

Applicants' arguments have been considered in regards to Beisner et al., Hager, and Kinkelaar et al. However, rejection is maintained. Applicants' have not demonstrated, in fact, that the polyether polyols encompassed by the teaching of these cited references lack teaching of the inclusion of terminal propylene oxide blocks, and it is maintained that such is an element is encompassed by the teachings of these references.

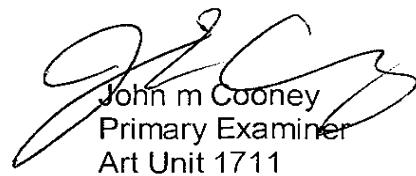
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John m Cooney whose telephone number is 703-308-2433. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, james seidleck, can be reached on (703) 308-2462. **Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.** The centralized facsimile number is **(703) 872-9306.** The changes are effective October 1, 2003.



John m Cooney  
Primary Examiner  
Art Unit 1711